

**UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF TEXAS
SAN ANTONIO DIVISION**

MULHOLLAND ENERGY SERVICES, LLC	§	
	§	
Plaintiff,	§	
	§	
v.	§	CASE NO. SA-24-CA-00093-XR
	§	
	§	
KLAUS, INC.	§	
	§	
Defendant/Third-Party Plaintiff,	§	
	§	
v.	§	
	§	
ENBRIDGE STORAGE (CUSHING), LLC, and CLERMONT INNOVATIVE DESIGN, LLC,	§	
	§	
Third-Party Defendants.	§	

**MULHOLLAND ENERGY SERVICES, LLC AND KLAUS, INC.’S
MOTION TO DISMISS WITHOUT PREJUDICE**

COME NOW Plaintiff Mulholland Energy Services, LLC (“Mulholland”) and Third-Party Plaintiff Klaus, Inc. (“Klaus”), and for their Motion to Dismiss, state as follows:

Initially, pursuant to this Court’s Order of June 11, 2025 (D.E.54), relating to the jurisdictional analysis, counsel for the Parties conferred regarding jurisdiction. Mulholland states that its only member is and was at the time of removal (D.E.1) Malcolm Mulholland, a resident of Texas. Therefore, Mulholland is and was at the time of removal a citizen of the state of Texas. Comparatively, Defendant Klaus is and was at the time of removal an Oklahoma corporation—a foreign entity, incorporated in Oklahoma and with its principal place of business in Oklahoma. Therefore, Klaus is and was at the time of removal a citizen of the state of Oklahoma. Accordingly, because Mulholland was a citizen of Texas and Klaus was a citizen of Oklahoma at the time of

removal, complete diversity existed between the parties when the case was removed from state court, thereby conferring subject matter jurisdiction on this Court based on the diversity of parties. 28 U.S.C. § 1441(a)-(b); *Caterpillar Inc. v. Lewis*, 519 U.S. 61, 70-73, 117 S.Ct. 467, 136 L.Ed.2d 437 (1997)(noting removal statute requires “that the case be fit for federal adjudication at the time the removal petition is filed”); *Texas Beef Group v. Winfrey*, 201 F.3d 680, 686-87 (5th Cir.2000)(same).

In addition, since there was complete diversity between Mulholland and Klaus at the time of removal, Klaus’ Rule 14(a) impleader of Enbridge Storage (Cushing) LLC and Clermont Innovative Design LLC has not destroyed diversity jurisdiction. *Fawvor v. Texaco, Inc.*, 546 F.2d 636, 638-643 (5th Cir.1977). Such is the case, because Mulholland has not attempted to assert a claim against Enbridge or Clermont. So, even if Enbridge or Clermont were of like citizenship as Mulholland, diversity is not destroyed by Klaus’s third-party impleader, because Mulholland has not asserted a claim against either Enbridge or Clermont in this case at this point. *Id.*

Despite the Court having subject matter jurisdiction, Plaintiff Mulholland and Third-Party Plaintiff Klaus file this their Joint Unopposed Motion to Dismiss Without Prejudice as to all claims and causes of action asserted against Defendant Klaus, Inc., and Third-Party Defendants Enbridge Storage (Cushing), LLC and Clermont Innovative Design, LLC, and in support thereof, would show unto this Court that Mulholland and Klaus no longer desire to pursue this case in the Western District of Texas, and that all claims in this lawsuit, including, but not limited Mulholland’s claims and Klaus’ third-party claims, in this lawsuit should be dismissed without prejudice against filing any further claims or actions.

WHEREFORE, PREMISES CONSIDERED, Plaintiff Mulholland Energy Services, LLC and Third-Party Plaintiff Klaus, Inc. respectfully request that this Joint Unopposed Motion to

Dismiss Without Prejudice be in all respects granted, with all attorneys' fees and court costs to be paid by the party incurring same.

Respectfully submitted,

s/ Jason Lee Van Dyke

Magana & Van Dyke, PLLC
Jason Lee Van Dyke, TX State Bar No. 24057426
1417 E. McKinney St., #110
Denton, TX 76209
Tel: (940) 382-1976
Fax: (469) 453-3031
E-Mail: jason@marsalalawgroup.com

and

CONNER & WINTERS, LLP

s/ Ryan T. Scharnell

P. Scott Hathaway (*pro hac vice*)
OK State Bar No. 13695
Ryan T. Scharnell (*pro hac vice*)
OK State Bar No. 30244
4100 First Place Tower
15 East Fifth Street
Tulsa, Oklahoma 74103
Tel. (918) 586-5711 | Fax (918) 586-8547
E-Mail: shathaway@cwlaw.com
rscharnell@cwlaw.com

CERTIFICATE OF CONFERENCE

I HEREBY CERTIFY that all counsel of record conferred regarding the matter of diversity jurisdiction prior to filing this motion, and the dismissal of all claims without prejudice requested herein is submitted jointly by Mulholland and Klaus, and the dismissal of all claims without prejudice is unopposed by Enbridge and Clermont.

s/Ryan T. Scharnell

Ryan T. Scharnell

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a copy of the above and foregoing was served on this 17th day of June 2025, pursuant to the Federal Rules of Civil Procedure, CM/ECF, to:

Ronald W. Dennis
Royston, Rayzor, Vickery & Williams, LLP
802 N. Carancahua, Suite 1300
Corpus Christi, Texas 78401

Jared L. Byrd
GORDON REES SCULLY MANSUKHANI
2705 Bee Caves Road, Suite 220
Austin, Texas 78746

s/Ryan T. Scharnell

Ryan T. Scharnell